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ORIGINAL

BEFORE THE ARIZONA CORPORATION COMMISSION

19

COMMISSIONERS:

JEFF HATCH-MILLER – Chairman
WILLIAM A. MUNDELL
MIKE GLEASON
KRISTIN K. MAYES
BARRY WONG

2006 NOV -2 P 3:49

AZ CORP COMMISSION
DOCUMENT CONTROL

In the matter of:

Docket No. S-20437A-05-0925

Reserve Oil & Gas, Inc., a Nevada corporation
3507 North Central Avenue, Suite 503
Phoenix, Arizona 85012

**RESPONDENTS' MOTION TO
PRECLUDE TESTIMONY OF
DARRYL McKNELLY**

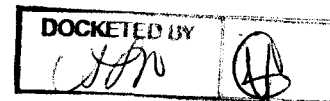
Allen and Jane Doe Stout, Sr., husband and wife
1309 West Portland Street
Phoenix, Arizona 85007-2102

Arizona Corporation Commission
DOCKETED

Allen and Jane Doe Stout, Jr., husband and wife
1309 West Portland Street
Phoenix, AZ 85007-2102

NOV - 2 2006

Respondents.



NOW COME the Respondents, Reserve Oil & Gas, Inc., Allen C. Stout, Eugenia Stout, and Allen L. Stout, and file this, their Motion to Preclude Testimony of Darryl McKnelly and, in support thereof, respectfully show the Administrative Law Judge as follows:

I.**INTRODUCTORY STATEMENT**

The purpose of this Motion is to preclude the testimony of the Securities Division's proffered "fact" witness, Darryl McKnelly ("McKnelly"). McKnelly did not make any investment alleged to have been made in the Temporary Cease and Desist ("TC&D"). McKnelly received a promissory note in exchange for a loan regarding a company known as Rentech. See, McKnelly's check attached hereto Exhibit "A," see also PROMISSORY NOTE attached hereto as Exhibit "B," McKnelly received his money back with interest, see also, RECEIPT OF PAYMENT attached hereto as Exhibit "C."

Thus, McKnelly cannot provide any direct evidence that pertains to the alleged violations of the securities laws as set forth in the TC&D. McKnelly's decision to provide \$40,000 took

1 place in another state as a result of conversations he had with an individual who is not a
2 Respondent in this matter. Therefore, any proffered evidence by McKnelly is inadmissible
3 pursuant to Rules 401-403 of the Arizona Rules of Evidence. If the Securities Division decides to
4 call Mr. McKnelly as a witness, the Administrative Law Judge should refuse to admit McKnelly's
5 testimony, or any hearsay evidence regarding McKnelly, because such testimony/evidence would
6 cause undue delay, and be a waste of time all in violation of Rule 403, Ariz. R. Evid.

7 In an attempt to determine whether this Motion is necessary, undersigned counsel
8 contacted Securities Division counsel earlier this week to inquire whether McKnelly would be
9 testifying at the hearing. Undersigned counsel asked whether McKnelly would be appearing in
10 person or whether the Securities Division would seek leave to allow McKnelly to testify
11 telephonically. Securities Division counsel responded that she "couldn't remember" whether
12 McKnelly would be called to testify. Undersigned counsel then asked, as a professional courtesy,
13 that the Securities Division call and inform undersigned counsel as soon as the decision
14 concerning McKnelly had been made. Securities Division counsel indicated that she would sit
15 down Friday and determine what evidence needed to be put on, and that she would not be calling
16 undersigned counsel to let them know whether, or how, McKnelly would be testifying. Thus, this
17 Motion became necessary.

18 II.

19 ARGUMENT

20 1. The Securities Division Cannot Satisfy Arizona Rules of Evidence 401, 402 21 and 403.

22 In an Administrative Proceeding such as this case, "[R]ules of evidence before the
23 Superior Court of the State of Arizona will generally be followed." R14-3-109(K). Arizona Rule
24 of Evidence 402 addresses specifically the relevance of evidence. This provision provides:

25 All relevant evidence is admissible, except as otherwise
26 provided by the constitution of the United States, by the
27 Constitution of Arizona or by applicable statutes or rules.
Evidence which is not relevant is not admissible.

1 Arizona Rules of Evidence, Rule 402. (Emphasis added.)

2 Rule 401 defines "relevant evidence":

3 'Relevant evidence' means evidence having any tendency to
4 make the existence of any fact that is of consequence to the
5 determination of the action more probably or less probable
6 than it would be without the evidence.

7 Arizona Rules of Evidence, Rule 401.

8 The allegations of the TC&D deal with "participation agreements" which the Securities
9 Division alleges were to provide for a percentage participation in oil wells to be drilled in Texas.
10 McKnelly never entered into such an agreement. Exhibits A, B and C attached hereto make that
11 fact clear. As such, none of the testimony he can provide is relevant to the allegations of the
12 TC&D. By rule, this type of evidence is not calculated to make any fact of consequence more or
13 less likely. As a result, it is not admissible. See, Ariz. R. Evid. 402.

14 **2. Admitting McKnelly's Irrelevant Testimony Will Cause Undue Delay And**
15 **Waste The Tribunal's Time In Violation Of Rule 403, Ariz. R. Evid.**

16 Rule 403 provides that even relevant evidence may be excluded if it results in undue delay
17 or a waste of time. See, Rule 403, Ariz. R. Evid. Allowing McKnelly to testify, given the fact
18 that he was not an investor and the TC&D makes no allegation that he is, would result in a waste
19 of time and unnecessarily delay the hearing of this matter. McKnelly should be precluded from
20 testifying. If the Securities Division wanted to allege additional violations, it had ample time to
21 move to amend the TC&D.

22 **III.**

23 **CONCLUSION**

24 For the foregoing reasons, the Respondents' Motion to Preclude the Testimony of Darryl
25 McKnelly should be granted.

26 ...

27 ...

...

ROSHKA DeWULF & PATTEN, PLC
ONE ARIZONA CENTER
400 EAST VAN BUREN STREET - SUITE 800
PHOENIX, ARIZONA 85004
TELEPHONE NO 602-256-6100
FACSIMILE 602-256-6800

1 RESPECTFULLY SUBMITTED this 2nd day of November, 2006.

2 ROSHKA DeWULF & PATTEN, PLC

3
4
5 By 

6 Paul J. Roshka, Jr., Esq.

7 James M. McGuire, Esq.

8 One Arizona Center

9 400 East Van Buren Street, Suite 800

10 Phoenix, Arizona 85004

11 602-256-6100 (telephone)

12 602-256-6800 (facsimile)

13 Attorneys for Respondents

14 ORIGINAL and thirteen copies of the foregoing
15 filed this 2nd day of November, 2006 with:

16 Docket Control

17 Arizona Corporation Commission

18 1200 West Washington Street

19 Phoenix, Arizona 85007

20 Copy of the foregoing hand-delivered
21 this 2nd day of November, 2006 to:

22 Marc E. Stern, Hearing Officer

23 Hearing Division

24 Arizona Corporation Commission

25 1200 West Washington Street

26 Phoenix, Arizona 85007

27 Shoshana O. Epstein

Securities Division

Arizona Corporation Commission

1300 West Washington Street, 3rd Floor

Phoenix, Arizona 85007

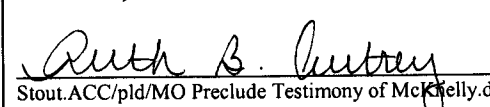

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Exhibit A

Date: January 6, 2006

Wells Fargo PhotoCopy
Request

Page 2 of 2

Reference: 1000044773213:1000044780213:1000044785213

DARRYL McKNELLY 11-02 **3204**
VICKI LYNN McKNELLY
1414 SIOUX TRACE
SAINT CHARLES, MO 63304
PH. 636-922-4267

Date 11-25-04 4-3/810 MO 4013

Pay Forty Thousand and no/100 \$ 40,000.00
to the order of Reserve Oil and Gas Dollars

Bank of America

ACH RVT 001000032

Memo FOR RENTECH SHARES

Advantage
Darryl W. McKnelly

[REDACTED]

SECURITY WARNING
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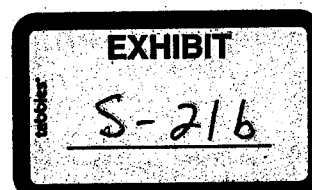
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Reserve Oil & Gas

R/T Number
Sequence Number
Account Number

[REDACTED]

Processing Date 20041203
Amount 40000.0
Check Number 3204



ACC000226

Exhibit B

PROMISSORY NOTE

\$40,000.00

**December 1, 2004
Phoenix, Arizona**

FOR VALUE RECEIVED, the undersigned (which term, as used herein, shall include each endorser, guarantor, accommodation party and surety of this Note and their respective successors, personal representatives, heirs, and assigns), jointly and severally, promise to pay to the order of Darryl McKnelly (hereinafter "Payee") located at 715 Montbrook, Ofallon, MO 63366 or at such other place as the holder hereof may from time to time direct, the sum of **FOURTY THOUSAND DOLLARS US (\$40,000.00 US)** with interest of five percent (5%) per annum on or before June 1, 2006, at which time the remaining and outstanding principal balance plus interest, shall be due and owing.

In the event the undersigned fails to make payment of the principal and/or interest in fully collected funds within fifteen (15) days after demand for such payment is made, the undersigned shall have the option to receive a penalty payment of \$100 per month plus interest at the rate of five percent (5%) per annum to the Payee or have the principle and interest on note on any unpaid balance applied towards a participation in an oil and/or gas well.

The undersigned expressly reserves the right to prepay all principal, interest, and other charges due under this Promissory Note at any time during its term without penalty.

The undersigned warrant that all of the proceeds of the loan evidenced by this Note shall be used to acquire or carry on a business or commercial enterprise. This Note shall be governed by and construed under the laws of the State of Missouri (but not including the choice of law rules thereof).

In the event of any default on this Note: (1) all remaining payments shall become due and payable together with penalties and interest accrued to that date of payment without notice, at the option of the Payee; (2) the undersigned shall pay the Payee any expenses, costs, and reasonable attorneys' fees of fifteen percent (15%) which the Payee may incur in connection with the collection of any monies due under this Note or in connection with the enforcement of any right under this Note or under any other agreement related to the loan evidenced hereby; (3) the Payee may exercise any or all other rights, powers, and remedies provided for in any instrument, document, or agreement now or hereafter evidencing, securing, or otherwise relating to the loan evidenced by this Note or now or hereafter existing at law or in equity or by statute or otherwise.

No failure or delay by the Payee to insist upon the strict performance of any term, condition, or covenant of this Note or to exercise any right, power, or remedy upon a breach hereof, shall constitute a waiver of any such term, condition, covenant, or

agreement or of any such breach, or preclude the Payee from exercising any such right, power, or remedy at any later time or times unless in writing. If the Payee accepts payment after its due date, this does not constitute a waiver of the Payee's right to receive timely payment of all other amounts or to declare a default for the failure to make any other payment when due.

Any payment on this Note coming due on a day on which is a legal holiday shall be made on the next succeeding business day. Each payment hereunder shall be applied first to the payment of all interest accrued hereunder as of the date of such payment, and the balance of such payment shall be applied to the principal amount hereof. Any prepayment shall be applied to payments under this Note in the inverse order of maturity. Any payments made after a default hereunder shall be applied to pay interest, principal, or costs as the Payee, in its sole discretion, may determine.

All notices, demands, requests for modification, consents or approvals under this Note must be in writing and shall be deemed to have been properly given when received by the Payee to the attention of Darryl McKnelly, 715 Montbrook, Ofallon, MO 63366, and when mailed by first class mail, postage prepaid, to the undersigned, at the address as it appears on the Payee's records, or at such other place as either party may designate in writing.

The parties hereto specifically acknowledge, understand, covenant, and agree that the principal indebtedness, accrued interest, and all other charges due hereunder may be prepaid at any time by the Payor to the Payee without penalty as provided under current law.

IN WITNESS WHEREOF, the undersigned have caused the Note to be executed in their names, under their seals, and on their behalf as of the day and year first written above.

RESERVE OIL & GAS, INC.



BY: _____

ALLEN STOUT, PRESIDENT

Exhibit C

RECEIPT OF PAYMENT

I, Darryl McKnelly, acknowledge receipt of payment in full from Reserve Oil & Gas, Inc, on Promissory Note dated December 1, 2004.

DATE: 03/04/06

BY: Darryl McKnelly
Darryl McKnelly

 Washington Mutual Bank, FA

16-3717/1220

 WASHINGTON
MUTUAL **43000.00**
FOUR THREE ZERO ZERO ZERO CTSCTS
*****Mar 3, 2006 43 THOUSAND DOLLARS AND 00 CENTS *****

PAY TO THE ORDER OF Darryl McKnelly

Washington Mutual Bank, FA

**DRAWER / PURCHASER COPY
NON-NEGOTIABLE**

REMITTER
Allen Stout

9602:104

Issued by Integrated Payment Systems Inc., Englewood, Colorado Wells Fargo Bank Ltd, N.A., Los Angeles, CA